

(20973-15US1)
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

MAY 14 2007

Applicant: Tazwell L. Anderson, Jr. et al

Serial No.: 09/837,128

: Group No.: 2611

Filed: April 18, 2001

: Examiner: Ngoc K. Vu

For: ELECTRONIC HANDHELD AUDIO/VIDEO
RECEIVER AND LISTENING/VIEWING
DEVICE**PRE-APPEAL BRIEF REQUEST FOR REVIEW**
(Resubmitted in Response to Notice of Improper Request)Mail Stop: AF
Commissioner for Patents
Post Office Box 1450
Alexandria, Virginia 22313

Applicant resubmits the present request for pre-appeal review of the FINAL Office Action in the above-identified application. The original Pre-Appeal Brief Request for Review was submitted on March 15, 2007, along with a Notice of Appeal, from which the period to file the Appeal Brief continues to run. On April 24, 2007, a Notice of Panel Decision was mailed indicating that, because the original request exceeded 5 pages in length, a conference was not yet held. On May 3, 2007, the undersigned received a message from Mr. Kenneth Wieder,, the Supervisory Patent Examiner for Art Unit 2623 and a participant in the April 24 Notice of Panel Decision. Mr. Wieder indicated that, in order to correct the request, the undersigned should re-file the request limited to 5 or fewer pages, along with a Notice of Appeal. Mr. Wieder further indicated that, upon receipt of the corrected request, a conference would be held. Mr. Wieder is thanked for his instructions and for providing the above guidance.

Applicant requests review of the FINAL Office Action in the above-identified application. No amendments are being filed with this request. This request is being filed with a second Notice of Appeal. Review and reversal are requested for the reasons stated on the attached sheets.

(20973-15US1)

PATENT
RECEIVED
CENTRAL FAX CENTER

MAY 14 2007

Remarks

Claims 18-66 remain pending, from which claims 18 and 36 are independent. In a FINAL Office Action dated September 15, 2006, all of the pending claims were rejected as being obvious over various combinations of the prior art. Each and every outstanding rejection relies upon Busack as the primary reference. Applicant submits that a prima facie case of obviousness has not been established because the system of Busack, even when modified in the manner suggested in the FINAL Office Action, still lacks a fundamental and inventive element of the claims. Further, there is no legitimate reason to modify Busack in a manner that would render obvious the claims. Applicant requests that the outstanding rejections be overturned.

First and foremost, Applicant submits that the primary reference to Busack is misunderstood in the Final Office Action and that Busack does not teach certain claim limitations for which Busack is cited. In the final Office Action, it is stated that "Regarding claim 18, Busack discloses a device (40, 42) to be used at an event (auto race) by a user while watching the event live. . . . " (see page 2 of the final Office Action). A substantially similar statement is made with respect to independent claim 36. Interestingly, while the final Office Action cites specific text sections of prior art references (by column and line) for other aspects of the prior art, the final Office Action provides NO CITATION to the text of Busack to support the interpretation that the devices 40,42 are located at the event. This interpretation was challenged in the After Final Amendment, and in response, in the Advisory Action the following was stated:

Applicant merely argues that Busack's device is not at an event. In response, Busack's receiver devices (40,42) are located at the auto race event as illustrated in figure 1. Particularly, the receiver devices are located inside race track 10 as shown in figure 1. Furthermore, the system of Busack allows a viewer to selectively watch not only his/her favorite vehicle during the race but also physical parameters of the race car such as speed, oil pressure etc, and/or listen to communications between the driver and pit crew. See abstract and figure 1. Therefore, Busack's receiver device is used at an event by a viewer while watching the event.

It is respectfully submitted that Busack does NOT teach (either expressly or inherently) that devices (40, 42) are used AT an event while the user watches the event LIVE. Nor is there any suggestion in Busack (or elsewhere in prior art) that the device 40, 42 of Busack would or could be used at an event while the user watches the event live. Instead, Busack's teachings are

(20973-15US1)
PATENT

quite clear that the computer 40 and keyboard 42 are to be used remote from the event, not at the event. The problem addressed, and solution offered, by Busack only make sense for individuals who are remote from the event. Individuals who attend events live would not suffer the problem that Busack seeks to overcome. In the BACKGROUND ART section, Busack characterizes the problem as follows at column 1, lines 13-24 and lines 35-45):

Auto races are extremely popular throughout the country. Often, these races are viewed by fans through television broadcasts. However, such broadcasts only allow the viewer to actual see those cars which are focused upon by the video camera. Typically, only the lead cars are the focus of the broadcaster's attention. Those who follow auto racing, however, are more interested in the activities of their favorite driver, than in only the pack leading the race. As a consequence, some viewers many only be able to see their favorite car and racer once or twice during an entire race if that car is not fortunate enough to be among the leaders in the race.

* * * * *

There is a need in the art for those who closely follow auto racing to provide a means for selective real time monitoring of any of the cars in a race during the race. Moreover, there is a need in the art for such a system which allows the viewer to not only visually follow his selected car and driver throughout the race, but which also allows the viewer to monitor some of the physical parameters of the race car, such as speed, oil pressure, fuel remaining and engine temperature, and which also would accomodate listening in on communications from the driver and his pit crew.

The forgoing discussion of conventional TV coverage, and the problem that individuals suffer, which Busack seeks to overcome, only makes sense when the individual is not attending the event. The problem addressed by Busack is only true for viewers who are watching the event remotely on TV. It does not make sense that a viewer, who is attending an event, could not watch their favorite car and racer live during the event. Instead, it is clear that the problem that Busack intends to address is a problem only for remote viewers who are watching the event remotely over a TV or other network broadcast, and who are not attending the event live.

Further, in the DISCLOSURE OF INVENTION section, Busack characterizes the invention in a manner that only makes sense for individuals who are remote from the event. Busack characterizes aspects of the invention as follows at column 1, lines 55-67:

Still a further aspect of the invention is the provision of an auto race monitoring system in which an accurate replication of each vehicle is made during the race, in real time, and is provided along with information respecting the

(20973-15US1)
PATENT

various operational parameters of the race car, such as speed, engine temperature and oil pressure.

Yet an additional aspect of the invention is to provide an auto race monitoring system which provides for replicating not only the position of a race car on a race track, but its attitude on that track.

Still an additional aspect of the invention is the provision of an auto race monitoring system which provides for broadcasting and presenting a race upon the internet.

In Busack's own words, the invention provides a system in which an accurate replication of each vehicle is made during the race and provides for replicating, not only the position of the cars, but also their attitude on the track (column 1, lines 55-64). An individual who is attending an event live would not find any value or interest in viewing computer generated replications of each vehicle. Instead, the individual watching the event live would be able to see the actual cars live. Also, as noted above in the DISCLOSURE OF INVENTION section, Busack states another aspect of the invention is to present a race over the Internet. Given the time needed to generate a computer replication of the race and transmit it over the internet, a delay would be introduced such that a person attending the event would see the actual car (both its position and attitude) well before the computer generated replication could be presented on Busack's devices (40, 42). Busack's replication would only be of interest and have value to individuals who are not attending the event, but instead are remote.

Moreover, the BEST MODE FOR CARRYING OUT THE INVENTION section of Busack only describes embodiments, for which the computer 40 and keyboard 42 are remotely used. At column 3, lines 24-32, Busack explains that a mainframe computer 36 is interconnected with the World Wide Web 38 to provide the capability of transmitting to any computer 40 which has access to the internet. It would not make sense for Busack's system to implement a mainframe computer 36 that generates a replication of the event, that establishes an internet connection 38 and that transmits the replications over the internet to computers 40 located at the event. The route through the World Wide Web would introduce an undesirable amount of delay in connection with Busack's simulation or replication of a race. Thus, it is clear that Busack's computers 40 and keyboards 42 are not for use by a user at an event.

In the Advisory Action, it is suggested that Figure 1 of Busack shows devices in the in-field of the race track. Figure 1 also shows the mainframe and internet within the in-field of the

(20973-15US1)
PATENT

race track. The positioning within Figure 1 is merely for convenience and to consolidate graphics. Figure 1 is not indicating the actual location of the mainframe computer, internet or devices. As explained above, Busack's teachings are inconsistent with locating the devices in the in-field of the race track.

The references to Barstow and Koehler fail to make up for the deficiencies of Busack. Koehler describes a system for listening to and viewing race events where remote computers 42 are interconnected over the internet to a server. The devices in Koehler's system are also remote from the event and afford individuals the ability to listen to and watch races from the convenience of their home over their computer. Thus, Koehler's and Busack's teachings are cumulative, to the extent that both only teach that it is desirable to provide a remote viewer with information related to an event over the Internet where the remote viewer monitors the event from a remote computer. No reference has been cited to make up of this deficiency. Thus, the combined teachings of Busack, Koehler and Barstow fail to teach or suggest the inventions of claims 18 and 36.

Moreover, it is submitted that no motivation has been established to modify Busack's system to provide a receiver, signal processing logic and a user interface that permit users to select video or image content from a plurality of cameras located at the event. As stated in the final Office Action, "Busack does not teach that the device is a portable wireless handheld device for wirelessly receiving video content and permitting the user to carry the portable wireless handheld device about the event and choose where to view the video content selected by the user while roaming at the event during the event". Allegedly, Barstow makes up for this deficiency.

It is respectfully submitted that Barstow does NOT. Barstow describes a method of encoding and broadcasting information regarding live events. In Barstow's system, an observer at an event uses a computer to enter start and end times and related textual information in connection with individual events. The observer, at the event, in Barstow's system is not viewing video content associated with the event from multiple cameras, but instead is entering, into a computer, start and end times and other event related statistical data to be compiled in a database and subsequently used by a remote viewer. The remote viewer in Barstow's system is NOT afforded with the ability to select between video content from multiple cameras. Instead, Barstow's remote viewer is permitted the ability to view individual subevents

(20973-15US1)
PATENT

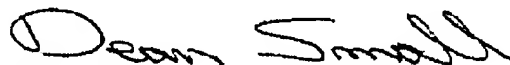
(e.g., individual plays in a game) where the subevents are partitioned within the overall event based upon the start and end time information entered by the observer. The remote viewer may view the individual subevents from a database. Barstow's viewer is not permitted to select between video content from a plurality of cameras located at the event while roaming at the event.

Busack's device provides a computer simulation or replication of a race over the internet to a remote viewer. Barstow's system permits remote viewers to view individual subevents downloaded from a database after each subevent has been coded with start and end times. Busack's system does NOT include any video cameras, but instead simply uses position tracking transmitters and receivers to follow the positions of the cars. The position information is used by Busack to create the computer generated replication of the race. Therefore, in order to add video content to Busack's device, as suggested in the final Office Action, one of ordinary skill would need to add a complete video/image infrastructure at the event to convey separate video or image feeds from each camera to the remote devices 40, 42. For example, in order to afford Barstow's subevent viewing (albeit remote) the infrastructure would necessarily include a plurality of cameras, camera operators, cabling, an on-site production facility, a network infrastructure, individuals at the event entering start and end times for each subevent and the like. None of this video infrastructure or personnel exists within Busack's system and there is no legitimate reason to add it. Thus, the Final Office Action fails to establish a prima facie case of obviousness.

In view of the foregoing, it is respectfully submitted that the pending claims define allowable subject matter and reversal of the outstanding Office Action is respectfully requested.

Respectfully Submitted,

Date: May 14, 2007



Dean D. Small, Reg. No. 34,730
THE SMALL PATENT LAW GROUP LLP
611 Olive Street, Ste. 1611
-St. Louis, MO 63101
(314) 584-4081